

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition :
 of :
296 BROAD STREET CORP. :
for redetermination of deficiency of :
franchise tax under Article 9-A of :
the tax law for the fiscal year :
ended July 31, 1965. :

The taxpayer having filed petition for redetermination of deficiency under Article 9-A of the tax law for the fiscal year ended July 31, 1965, and a hearing having been held on June 8, 1972 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Albert Siegel, Certified Public Accountant, and Aron B. Katz, Esq. and Richard D. Mondre, Esq., of Counsel for the taxpayer, appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated under the laws of New Jersey on November 14, 1947 and began doing business in New York on August 1, 1949. During the years 1950 through 1955 it acquired land and buildings located at 314-328 West 57th Street and 317-323 West 56th Street, New York City, and operated a parking garage in one of the buildings. It also held the stock of various subsidiary corporations. On May 6, 1965 the entire land and buildings were sold on the installment basis for a profit of \$1,623,272.53, of which \$223,899.60 was included in entire net income on the franchise tax return for the fiscal year ended July 31, 1965, leaving a remaining deferred profit of \$1,399,372.93.

(2) The corporation claimed it was not subject to tax subsequent to the fiscal year ended July 31, 1965, and requested refund of the franchise taxes paid for the fiscal years ended July 31, 1966 and July 31, 1967. The Corporation Tax Bureau issued a statement of audit adjustment on March 15, 1968 and notice of deficiency on May 15, 1968 adding to entire net income the remaining deferred profit of \$1,399,372.93 as follows:

Entire net income reported	\$ 47,894.84
Plus: deferred profit on installment sale of New York real property	1,399,372.93
Adjusted entire net income	1,447,267.77
Tax at 5-1/2%	79,599.73
Tax reported	2,634.21
Deficiency	76,965.52

Tax paid for the fiscal years ended July 31, 1966 and July 31, 1967 aggregating \$4,234.00 was allowed as a credit against the above deficiency leaving a balance due of \$72,731.52.

(3) The taxpayer filed a timely petition for redetermination of deficiency, and based on a subsequent field audit examination, a greater deficiency was asserted under date of October 5, 1971 as follows:

Entire net income as previously adjusted	\$1,447,267.77
Plus: Net capital loss attributable to subsidiary capital:	
Bertbli Realty Corp. - Loss \$53,467	
Leparc, Inc. - Loss 89,862	
LRG Realty Corp. - Gain <u>39,888</u>	
Net capital loss	103,441.00
Revised entire net income	1,550,708.77
Tax at 5-1/2%	85,288.98
Plus subsidiary capital tax	557.79
Total tax	85,846.77
Tax reported	2,634.21
Revised deficiency	83,212.56

(4) On the franchise tax returns filed for the fiscal years ended July 31, 1963, July 31, 1964 and July 31, 1965, the corporation computed and paid a tax on 100% of its entire net income.

(5) Section 208.9(d) of the tax law states:

"(d) The tax commission may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer;"

(6) Section 208.9(a)(1) of the tax law states in part:

"(a) Entire net income shall not include: (1) income, gains and losses from subsidiary capital * * *,"

The State Tax Commission hereby

DECIDES:

(A) The taxpayer is a foreign corporation and the sale of the New York real estate terminated its taxable status in this state. The profit on the sale was attributable to New York sources and none of it should escape taxation. Accordingly, pursuant to Section 208.9(d) of the tax law, the entire profit of \$1,623,272.53 must be included in entire net income in the year of the sale.

(B) The revised deficiency of \$83,212.56 for the fiscal year ended July 31, 1965 as indicated at (3) above, is affirmed together with interest due in accordance with the provisions of Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 2nd day of August 1973.

STATE TAX COMMISSION


President


Commissioner


Commissioner